

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KENNETH RICKENBACKER,

Petitioner,

v.

21-CV-674-LJV
ORDER

SUPERINTENDENT LA MANNA,

Respondent.

The *pro se* petitioner, Kenneth Rickenbacker, is an inmate confined at the Five Points Correctional Facility (“Five Points”) in Romulus, New York. He seeks relief under 28 U.S.C. § 2254, alleging that his conviction in the New York State Supreme Court, Sullivan County, was unlawfully obtained. Docket Item 1. He has paid the \$5.00 filing fee.

For the reasons that follow, the Court transfers the matter to the United States District Court for the Southern District of New York.

Under 28 U.S.C. § 2241(d),

[w]here an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, *the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him* and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

Id. (emphasis added). Five Points is located within the Western District of New York, and the New York State Supreme Court, Sullivan County, is located within the Southern

District of New York. Venue therefore properly lies in either district. The Court nevertheless finds that transfer of this matter to the Southern District would be “in furtherance of justice.” See *id.* All records relating to the petitioner’s underlying criminal conviction, and presumably any witnesses, other than the petitioner himself, who might testify at a hearing, are located in the Southern District, making that district a more convenient venue. See *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 499 (1973).

ORDER

In light of the above, IT IS HEREBY ORDERED that the Clerk of the Court shall transfer this matter to the United States District Court for the Southern District of New York.

SO ORDERED.

Dated: July 27, 2021
Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE